IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8559 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHALABHAI K KOTWAL (MINOR)

Versus

PRAVINCHANDRA M NAYAK

Appearance:

MR RAJENDRA PATEL for Petitioner

MR BY MANKAD, AGP for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/06/2000

ORAL JUDGEMENT

Minor petitioner Bhalabhai, through his father

and natural guardian Koyabhai Kodarbhai Kotwal, has preferred this petition under Articles 226 & 227 of the Constitution of India, for setting aside and modification of the order passed by the learned MAC Tribunal, Himmatnagar in MAC Petition No.406/86 to the extent that "award is to be drawn after the applicant pays the deficit court fee" and for a further direction to the learned Tribunal to draw the award irrespective of payment of court fee as a condition precedent for drawing the award.

Minor petitioner preferred an application under sec.110A of the Motor Vehicles Act before the MAC Tribunal of District Sabarkantha at Himmatnagar being MAC Petition No. 406/86 for getting compensation of Rs.1 Lakh for the injuries sustained by the minor in a vehicular accident which took place on 14.8.1986. Since on the date of accident, petitioner Bhalabhai was minor, petition was filed through his guardian Koyabhai. However, as on today, minor petitioner must have attained majority. Under the circumstances, office is directed to treat the minor petitioner Bhalabhai as major and amend the cause title of the petition accordingly.

On call, learned counsel Mr.Rajendra Patel, appearing for the petitioner is absent. It is brought to the notice of this Court by learned AGP Mr. Mankad that Mr. Rajendra Patel has joined Gujarat Universities Service Tribunal. Under the circumstances, as per the practice and procedure, petitioner is required to be intimated about the same by the office by issuing notice so as to enable him to make necessary arrangements. However, since this Court is inclined to allow the petition passing order in favour of the petitioner, no such formal notice is required to be issued to the petitioner and as no adverse order is to be passed against the petitioner. Hence, the present petition is heard today and is disposed of by this judgment.

As stated above, minor petitioner preferred MAC Petition No. 406/86 for getting compensation of Rs. 1 Lakh for the injuries sustained by him in a vehicular accident, before the MAC Tribunal, Himmatnagar. Since, minor petitioner was not able to pay court-fee, he preferred application for filing MAC Petition as an indigent person under O.33 R.1 of CPC, which came to be allowed and minor petitioner was permitted to prosecute claim petition as an indigent person. Said claim petition came to be dismissed by the learned MAC Tribunal, Himmatnagar vide judgment and award dated

2.4.1990. While dismissing the claim petition, learned MAC Tribunal ordered that award should be drawn only after payment of deficit court fee. Since the petitioner was not to get any amount as compensation from any of the opponents on dismissal of the claim petition, opponents were not interested in the further litigation and only the State had interest in recovery of the court fee amount. Pending this petition, respondent nos. 1 to 3 are deleted as per the order dated 30.6.1992 passed by this Court and the Collector, Sabarkantha is brought on record as Respondent No.4. Court fee Recovery Authority, namely the Collector, Sabarkantha, is the only respondent in the petition.

Learned AGP Mr. Mankad appearing for respondent - Collector of Sabarkantha states that even during inquiry by Collector of Sabarkantha, petitioner and the family of the petitioner is found to be an indigent. Word " Daridra" (in vernacular Gujarati language) is used by the Collector in its report. Said report is dated 18.4.1991 and the State is not interested in taking any measures to recover court fee amount from the petitioner. Mr. Mankad has drawn attention of this Court to the observations made by the Apex Court in the decision rendered in the case of State of Haryana v/s Smt. Darshana Devi & Others, reported in (1979)2 SCC 236, wherein the Apex Court, through Mr.Justice Krishna Iyer, as he then was, has observed that "even so it is fair for the State to make clear the situation by framing appropriate rules to exempt from levy of court-fees cases of claims of compensation where automobile accidents are the cause." Though there is a clear provision that the petitioner is bound to pay court fees even if the petition is dismissed, in such cases, the State, if it desires, can initiate proceedings for recovery of court fees. However, it would not be legal or proper to hold and direct that no formal award should be drawn unless court fee is paid. It is the law and practice both that in the cases where petitioner succeeds, formal awards are being drawn as the same are to be drawn and the amount of court fee can be recovered from the amount of compensation, if deposited with the Tribunal. In the case of failure in making payment of court fee on the part of the successful claimants, the State can recover the amount of court fee from the assets of the successful or otherwise able claimants, but the tribunal cannot refuse to draw a formal award. On the contrary, such an order may come in the way of even the State Government, if State intends to recover the amount of court fee from the successful or unsuccessful claimants. Recovery proceedings for court fee normally can be initiated on

the strength of the award. Judgment of the tribunal itself can be treated as an award. So, drawing of award in the form of " Hukamnama" would be a mere formality and the same should be observed immediately after the pronouncement of the judgment. Unless award is drawn, unsuccessful claimant cannot prefer any appeal which is provided under the Statute. High Court, while dealing with such appeals, can pass appropriate orders for payment of court fee, but the same should not be made an embargo by the tribunal. Thus, the order passed by the tribunal adversely affects the right of appeal provided under the Statute. In absence of an award, a successful or unsuccessful claimant would not be able to prefer appeal. Hence, I am in agreement with the contentions raised by the petitioner in this petition for modification of the order and setting aside condition not to draw an award unless court fee is paid by the petitioner. Learned AGP Mr. Mankad also states that the tribunal should have drawn award especially when the petitioner was permitted to prosecute claim petition as an indigent person and he was unsuccessful minor from the class which can be termed as "economically backward class". I appreciate submission of the learned AGP Mr. Mankad.

As observed above, since the advocate appearing for the petitioner Mr. Rajendra Patel has joined Gujarat Universities Service Tribunal, formal notice of intimation to that effect and further intimating to make necessary arrangements, is required to be issued to the petitioner. However, since no order adverse to the petitioner is passed and since the petition is allowed in favour of the petitioner, I see no reason to undergo such a mere formality. Simultaneously, by now the petitioner has attained majority, hence the office is directed to treat the petitioner as major and amend the cause title of the petition accordingly as observed above.

For the reasons stated above, petition is allowed. Impugned judgment and award dated 2.4.1990 passed by the learned MAC Tribunal, Himmatnagar in MAC Petition No. 406/86 in so far as directing not to draw an award unless petitioner pays deficit court fee, is hereby quashed and set aside. Tribunal shall draw the award as per the judgment. Rule is made absolute accordingly with no order as to costs.

16.6.2000 [C.K. BUCH, J]
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